

REMARKS

In the Office Action dated April 16, 2003, claims 13-18 were rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-2, 5-4, 16-21, 24-30, 32-33, 36-39, 41-42, 45-48, and 51-54 were rejected under 35 U.S.C. §102(e) as being anticipated by US patent no. 6,151,643 issued to Cheng et al. (herein after "Cheng"). Lastly, claims 3, 4, 15, 22-23, 31, 34-35, 40, 43-44, 49-50, and 55-56 were rejected under 35 U.S.C. §102(e) as being unpatentable over Cheng.

Applicant has cancelled claims 31, 40, 49-50 and 55-56 without prejudice. Additionally, Applicant has added claims 57-64. Accordingly, claims 1-30, 32-39, 41-48, 51-54, and 57-64 are currently pending.

Claim Objections

Claim 55 was objected to due to a typographical error appearing in the claim. Applicant has cancelled claim 55, thereby rendering moot Examiner's objection to claim 55.

Claim Rejections Under 35 U.S.C. §112

Claims 13-18 were rejected as being indefinite. In particular, claim 13 was said to not recite a "request" for any component. Applicant has amended claim 13 to more clearly recite "a second computer operably connected to the first computer, the second computer associated with one or more installable components *and equipped to receive*

a request for an upgrade of one or more components from the first computer..." As such, Applicant respectfully requests that the §112 rejection be removed.

Claim Rejections Under 35 U.S.C. §102

Claim 1

Claim 1 (as amended) recites a method of selecting software components for installation on a client computer. The method comprises:

receiving from the client computer, a request for the upgrade of a first software component capable of being processed by the client computer;

receiving configuration information regarding a software configuration of the client computer including information regarding at least one additional software component that is **necessary for the execution of the first software component and that has been determined to be missing from the client computer,**

identifying one or more software components for installation on the client computer based at least in part upon the request and the configuration information, the second one or more software components including the at least one additional software component **determined to be missing from the client computer;** and

transmitting the second one or more software components to the client computer. (emphasis added)

Thus, a client computer makes a request for an upgraded software component.

Configuration information is received from the client computer including information regarding at least one additional software component that (a) is necessary for the execution of the software component that is to be upgraded by the client computer, and (b) has been determined to be missing from the client computer. Based at least in part upon this configuration information, software components (including the additional software component determined to be missing from the client computer) are identified for installation on the client computer, and are transmitted to the client computer.

Applicant respectfully submits that claim 1 as amended is not taught or suggested by Cheng. Applicant respectfully submits that **in Cheng, it is only the software *updates* themselves that are retrieved and not additional software components needed to support the updates yet missing from the client computer.**

In contrast, in claim 1, additional software components that are determined to be missing from the client computer and that are necessary for the execution of the requested software update are also retrieved.

For at least the reasons, Applicant respectfully submits that claim 1 is not anticipated by Cheng and is therefore in condition for allowance.

Claims 13, 19, 20, 32, 38, 39 and 41

Independent claim 13, as amended, recites in part:

“...to transmit information about the system resources of the first computer to the second computer, the information including indication of components of an operating system that is executing in the first computer...and to identify the location of one or more installable components based upon the at least one component to be upgraded **and the system resources of the first computer including the indication of components of an operating system that is executing in the first computer.**”

Applicant respectfully submits that Cheng does not teach or suggest determining the type of operating system that is executing on the client machine so as to identify the correct version of a requested component. Examiner asserts, “the client application [of Cheng] is an operating system which is executing in the computer because client application includes all the information about the installation procedures, installation programs, files and performs the installation process...”

Applicant respectfully submits that the Examiner's assertion is contrary to the commonly accepted usage of the terms "application" and "operating system". In particular, an operating system provides a software platform such as UNIX, LINUX, DOS, OS/2, Windows 3.X, Windows 95, Windows 98, and Windows NT, on top of which application programs can run. Furthermore, Figure 9 of Cheng's disclosure illustrate client application 104 and operating system 917 being two distinct components of client computer 101.

Applicant respectfully submits that for at least the reasons stated above, independent claim 13 is not anticipated by Cheng and is therefore allowable. Furthermore, due at least to their dependency on claim 13, dependent claims 14, and 16-18 are similarly allowable.

Each of independent claims 19, 20, 32, 38, 39 and 41 recite similar limitations to those recited by claim 13. In particular, claim 19 recites, "...based upon the components identified by the configuration file and the client conditions including the type of identified operating system components that are executing on the client computer." Claim 20 recites, "...means for identifying one or more components based upon the request and the system conditions including the type of operating system that is executing on the client computer." Claim 32 recites, "...the system conditions including a characteristic of an operating system that is executed on the computer..." Claim 38 recites, "...wherein the upgrade manager generates an upgrade request that includes the contents of the configuration file and the client conditions including the type of operating system that is executing on the client computer." Claim 39 recites, "...the system conditions including indications about an operating system that is executing on

the client computer, the identified components being compatible with the operating system that is executing on the client computer..." Claim 41 recites, "receiving the requested components, the components being compatible with the operating system that is executing on the computer..."

Accordingly, Applicant respectfully submits that for at least the reasons stated above with respect to claim 13, claims 19, 20, 32, 38, 39 and 41 are likewise allowable.

Claims 2, 5-12, 14, 16-18, 21, 24-30, 33, 36-37, 47-48, and 51-52

Due at least to their dependency on one of claims 1, 13, 19, 20, 32, 38, 39 and 41, Applicant respectfully submits that claims 2, 5-12, 14, 16-18, 21, 24-30, 33, 36-37, 47-48, and 51-52 are allowable for at least the reasons discussed above.

Claim Rejections Under 35 U.S.C. §103

Claims 3, 4, 15, 25, 22-23, 34-35, and 43-44

In Claims 3, 4, 15, 25, 22-23, 34-35, and 43-44, Official Notice was taken as to "determining expiration time and stopping the identification step". Applicant respectfully reminds Examiner that MPEP §2144.03 states that "Official notice unsupported by documentary evidence should only be taken by the Examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." Furthermore, §2144.03 continues to state, "it might not be unreasonable for the examiner in a first Office action to take official notice of facts by asserting that certain limitations in a dependent claim are old and well known expedients in the art without the support of documentary evidence

provided the facts so noticed are of notorious character and serve only to 'fill in the gaps' which might exist in the evidentiary showing made by the examiner to support a particular ground of rejection. *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001); *Ahlert*, 424 F.2d at 1092, 165 USPQ at 421."

Applicants respectfully traverse Examiner's rejections to claims 3, 4, 15, 25, 22-23, 34-35, and 43-44. Applicants submit that the subject matter contained in claims 3, 4, 15, 25, 22-23, 34-35, and 43-44 is not well-known nor is common knowledge to the extend required by §2144.03. Applicant concedes that the use of a file creation date and time may be well-known in the art. However, the use of an expiration time in association with a configuration file, and moreover, the use of an expiration time to stop identification of one of more components upon expiration of the configuration is not well-known. For example, in one embodiment of Applicant's invention, the expiration time is a time by which an upgrade installation process is to be completed, otherwise, the component server will refuse to complete the transaction. Since the configuration file may be copied to other computers, the use of the expiration time can advantageously be used to limit the lifespan of the configuration file, and prevent others from hosting the configuration file. Applicant once again submits that such functionality is not notoriously well-known in the prior art.

Accordingly, since claims 3, 4, 15, 25, 22-23, 34-35, and 43-44 do not cure the deficiencies stated with respect to Cheng, Applicant respectfully requests Examiner to further allow claims 3, 4, 15, 25, 22-23, 34-35, and 43-44.

Claims 49, 50 and 55

For the purpose of prosecutorial expediency, Applicants have cancelled claims 49, 50 and 55 without prejudice, thereby rendering Examiner's rejection to these claims as moot.

Claims 31, 40 and 56

For the purpose of prosecutorial expediency, Applicants have cancelled claims 31, 40 and 56 without prejudice, thereby rendering Examiner's rejection to these claims as moot. However, the Examiner took Official Notice to claims 31, 40 and 56.

Notwithstanding their being cancelled, Applicant disagrees with Examiner's assertions with respect to claims 31, 40 and 56 and hereby reserves the right to argue the merits of the subject matter of claims 31, 40 and 56 in the future.

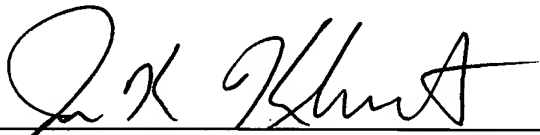
Summary

Applicant has endeavored to address all of the Examiner's concerns as expressed in the outstanding Office Action. Accordingly, amendments to the claims for patentability purposes, the reasons therefore, and arguments in support of the patentability of the pending claim set are presented above. Any claim amendments which are not specifically discussed in the above remarks are not made for patentability purposes, and the claims would satisfy the statutory requirements for patentability without the entry of such amendments. In addition, such amendments do not narrow the scope of the claims. Rather, these amendments have only been made to increase claim readability, to improve grammar, and to reduce the time and effort required of

those in the art to clearly understand the scope of the claim language. In light of the above amendments and remarks, reconsideration and withdrawal of the outstanding rejections is specifically requested. If the Examiner has any questions which may be answered by telephone, he is invited to call the undersigned directly.

Respectfully submitted,
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